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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/049,949 | 04/22/2002 | Hildegard Romer | WEI0033 | 2546 |

7590 04/07/2006

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| EXAMINER |
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HUG, ERIC J

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| ART UNIT | PAPER NUMBER |
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1731

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/049,949 | Applicant(s) ROMER ET AL. | |
| | Examiner Eric Hug | Art Unit 1731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,7-10 and 13 is/are allowed.
- 6) ☒ Claim(s) 3-6,11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 28, 2005 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3, 4, 11, and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,588,234. Although the conflicting claims are not identical, they are not patentably distinct from each other because

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the device used for coloring glass in the present invention is the same as the device used for plaining glass in US 6,588,234, and in particular the stain supply device of the present invention does not appear to be different from the addition point of active plaining media in US 6,588,234. US 6,588,234 also provides for alternative addition points relative to a skull device. Absent any claims to structural features of the stain supply device, the apparatus is structural indistinguishable from that of US 6,588,234.

Claims 3-6, 11, and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,588,234 in view of Pieper (US 4,004,902). If Applicant disagrees that the devices of the present invention and US 6,588,234 are not equivalent, then the device of the present invention differs from that of US 6,588,234 only with respect to the addition of a stain supply device. Pieper discloses a device for dyeing glass including a melting furnace, an area for heating and mechanical agitation, and a feeder to a subsequent processing device. A color feeding device is positioned above the space where the glass is heated (see Figure and column 3, lines 53-56), or may be positioned at the outlet of the melting furnace before the heated passage (see column 3, lines 18-23). The position of the feeding device in the vicinity of the heated passage provides for good color mixing in a short period of time and allows for rapid color changeover (see e.g., column 4, lines 53-60). It would have been obvious to modify the device of US 6,588,234 with the inclusion of a stain supply device, and also obvious to locate the stain supply device in a region of the device before mixing or at mixing of the glass melt.

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Claims 5 and 6 has the added feature of providing two strands downstream of the melting device, a feature that is also disclosed by Pieper (see column 4, line 67 to column 5, line 10). It would have been obvious to construct the claimed apparatus as having one or more strands arranged downstream of the melting furnace so that several colors can be produced at various points at the same time.

Allowable Subject Matter

Claims 1, 2, 7-10, and 13 are allowed.

The following is a statement of reasons for indication of allowable subject matter:

The prior art does not disclose or suggest a method of producing colored glass wherein stain is added to a glass melt at a location downstream of a glass melting vessel and either before or in a skull device located in the course of further processing of the glass melt.

Response to Arguments

Applicant's arguments filed July 28, 2005 have been fully considered.

Applicant argues that the claimed invention would not be obvious over a combination of Pieper (US 4,004,902), Mantesa (US 4,780,121), and Binder (US 5,268,925). Upon reconsideration, the rejection under 35 U.S.C. 103(a) over Pieper in view of Mantesa and Binder, set forth previously, has been withdrawn. The claims are allowable over the prior art of record. It is recognized that Pieper utilizes a mechanical agitator to provide a sufficient amount of mixing between coloring stain and glass melt, and that there is no teaching in either Mantesa or

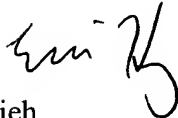
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Binder to suggest that their skull devices can replace a mechanical agitator and provide the necessary level of agitation for mixing stain and glass melt.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Hug whose telephone number is 571 272-1192.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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